

Message Text

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C O N F I D E N T I A L STATE 059092

FOR US TEXTILE NEGOTIATING TEAM

FOLLOWING REPEAT BONN 03715 SENT ACTION SECSTATE INFO BERLIN
COPENHAGEN BRUSSELS BUCHAREST BUDAPEST LONDON MOSCOW PARIS WARSAW
USBERLIN USNATO MAR 01.

QUOTE C O N F I D E N T I A L BONN 03715

USEEC

E.O. 11652: GDS
TAGS: PGOV, BQG, EEC, RO, PL, HU
SUBJECT: APPLICABILITY TO BERLIN OF EC TEXTILE AGREEMENTS WITH CEMA COUNTRIES

REFS: (A) BONN 1104 (EXDIS)(NOTAL); (B) BONN 351
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SUMMARY: EC NEGOTIATIONS WITH HUNGARY AND POLAND ON A TEXTILE AGREEMENT ARE AT AN IMPASSE, WHICH MAY BE ONLY TEMPORARY, OVER AN "AREA OF APPLICATION" CLAUSE WHICH WOULD INTER ALIA ENSURE CONFIDENTIAL

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THE INCLUSION OF BERLIN IN THE AGREEMENT. ALTHOUGH THE FRG AGREED, AT UK REQUEST, THAT THE EC NEGOTIATOR SHOULD NOT MENTION BERLIN SPECIFICALLY, BOTH THE POLES AND HUNGARIANS HAVE INDICATED THEY KNOW THE CLAUSE IS TO INCLUDE BERLIN. THE MATTER HAS ATTRACTED HIGH-LEVEL ATTENTION IN THE FRG AND THE UK. THE PRESENT BONN GROUP DISCUSSIONS OF THE SUBJECT HAVE SHOWN A GREATER FRG/UK CONSENSUS ON THE TACTICS TO BE USED IN OBTAINING EASTERN AGREEMENT TO THE CLAUSE THAN WAS THE CASE IN THE EC/SOVIET

FISHERIES AGREEMENT NEGOTIATIONS. SINCE THIS SUBJECT PROMISES TO BE ONE OF CONTINUING ATTENTION, THERE FOLLOWS A DETAILED ACCOUNT OF THE RECENT EC NEGOTIATIONS WITH HUNGARY AND POLAND ON THE BERLIN ISSUE AND OF RECENT BONN GROUP CONSIDERATION OF THE MATTER.

END SUMMARY

1. AT THE FEBRUARY 14 BONN GROUP MEETING, THE FRG REP (VON BRAUNMUEHL) SAID THAT HE WISHED TO REPORT ON A POTENTIALLY SIGNIFICANT DEVELOPMENT ON THE AREA OF APPLICATION CLAUSE IN THE NEGOTIATIONS FOR AN EC-HUNGARIAN TEXTILE AGREEMENT (REFS A AND B). (COMMENT: FOR PURPOSES OF CONVENIENCE, THE CLAUSE IS AS FOLLOWS: "THE PRESENT AGREEMENT SHALL APPLY TO THE TERRITORIES WITHIN WHICH THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY IS APPLIED AND UNDER THE CONDITIONS LAID DOWN IN THAT TREATY, ON THE ONE HAND, AND TO THE TERRITORY OF (HUNGARY), ON THE OTHER HAND. END COMMENT.)
2. VON BRAUNMUEHL SAID THAT THE FRG HAD ACCESSED AT THE END OF LAST YEAR TO THE BRITISH DESIRE NOT TO MENTION BERLIN SPECIFICALLY WHEN THE EC NEGOTIATOR EXPLAINED THE MEANING OF THE CLAUSE TO THE HUNGARIAN DELEGATION. IN CONFIDENTIAL

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OTHER WORDS, INSTEAD OF FOLLOWING THE PROCEDURE AGREED FOR USE IN THE FISHERIES TALKS WITH THE USSR (THE EC NEGOTIATOR WOULD TELL THE SOVIET NEGOTIATOR ON THE MARGINS OF THE NEQOTIATIONS THAT THE CLAUSE REFLECTED THE WELL-KNOWN POSITION OF THE COMMUNITY ON BERLIN, REF D) THE EC NEGOTIATOR WOULD BE INSTRUCTED TO TELL THE HUNGARIAN DELEGATION THAT "THE MEANINQ OF THE CLAUSE IS KNOWN". HE SAID THE FRG HAD AGREED TO DO THIS BECAUSE THE EC HAD TOLD THE SOVIETS IN THE FISHERIES TALKS THAT BERLIN WAS ALSO INCLUDED UNDER THE TERMS OF THE APPLICABILITY CLAUSE AND BECAUSE THE BRITISH FEARED THAT A SPECIFIC REFERENCE TO BERLIN MIGHT ENDANGER THE OUTCOME OF THE TALKS.

3. VON BRAUNMUEHL SAID THAT FOREIGN MINISTER GENSCHER REGARDED THE MATTER AS VERY IMPORTANT. GENSCHER HAD DECIDED TO ACCEPT THIS FORMULATION AND, ON THAT BASIS, INSTRUCTIONS HAD BEEN SENT TO THE FRG MISSION IN BRUSSELS TO APPROVE IT. VON BRAUNMUEHL ALSO SAID THAT THE HUNGARIANS WOULD BE STOPPING IN WARSAW ON THEIR RETURN TO BUDAPEST FOR CONSULTATIONS. IF THE POLES ACCEPTED THIS FORMULA, IT COULD REPRESENT A BREAK-THROUGH ON THE QUESTION OF THE AREA OF APPLICATION CLAUSE IN NEGOTIATIONS BETWEEN THE EC AND EAST EUROPEAN STATES. HE SAID THAT WHEN THE EC NEGOTIATOR PRESENTED THE AREA OF APPLICATION CLAUSE TO THE HUNGARIAN NEGOTIATOR AND SAID THAT ITS MEANING IS KNOWN,

THE HUNGARIAN DID NOT REJECT IT BUT ASKED THAT A JOINT DECLARATION BE DRAFTED WHICH WOULD SAY THAT NOTHING IN THE TREATY AFFECTS THE LEGAL STATUS OF COUNTRIES IN WHICH THE BILATERAL AGREEMENT WOULD APPLY. THE EC NEGOTIATOR AGREED AD REF TO THIS SUGGESTION BUT SAID THAT IT WOULD ALSO BE NECESSARY TO REFER IN THE DECLARATION TO THE MEANING OF THE CLAUSE BEING KNOWN.

4. SUBSEQUENTLY, ON FEBRUARY 15, THE FOLLOWING STATE-
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MENT (DRAFTED BY VON BRAUNMUEHL'S OFFICE) WAS PROPOSED TO THE HUNGARIANS (EMBASSY INFORMAL TRANSLATION OF STATEMENT GIVEN IN FRENCH): "WITH RESPECT TO THE CLAUSE CONCERNING THE AREA OF APPLICATION OF THE AGREEMENT, THE MEANING OF WHICH IS KNOWN, THE CONTRACTING PARTIES PROCEED ON THE ASSUMPTION (PARTENT DE L'IDEE) THAT THE PRESENT AGREEMENT CANNOT AFFECT IN ANY WAY THE LEGAL STATUS OF ANY TERRITORY TO WHICH THE AGREEMENT IS APPLICABLE."

5. ON FEBRUARY 16, THE HUNGARIANS REQUESTED THE INSERTION OF THE WORD "INTERNATIONAL" BEFORE LEGAL STATUS (PROBABLY IN ORDER TO BE ABLE TO ASSERT THAT THE EASTERN INTERPRETATION OF THE STATUS OF WEST BERLIN AS AN "INDEPENDENT POLITICAL ENTITY" IS APPLICABLE), SUGGESTED THE SUBSTITUTION OF "CONSIDERE" FOR "PARTENT DE L'IDEE" (WHICH THE FRENCH TELL US HAS ESSENTIALLY THE SAME MEANING) AND, MOST CURIOUSLY, ASKED THE MEANING OF THE PHRASE "THE MEANING OF WHICH IS KNOWN." THE EC NEGOTIATOR, ON INSTRUCTIONS, DID NOT RESPOND BUT CONSULTED WITH THE OTHER EC MISSIONS. ON FEBRUARY 17, THE FRG BONN GROUP REP (VON BRAUNMUEHL) SUGGESTED TO THE BONN GROUP THAT THE HUNGARIAN QUESTION BE ANSWERED USING THE STATEMENT (PARAGRAPH 1, SUPRA) PREPARED FOR THE FISHERIES NEGOTIATIONS WITH THE SOVIETS. BOTH THE FRENCH REP (RICHARD) AND THE UK REP (EYERS) SAID THEY WOULD HAVE TO SEEK INSTRUCTIONS. THE FCO'S RESPONSE, OF WHICH THE BONN GROUP WAS INFORMED FEBRUARY 23, IS SET OUT IN PARAGRAPH 9 INFRA.

6. ON THE AFTERNOON OF FEBRUARY 17, THE HUNGARIANS REVEALED THAT THEY KNEW VERY WELL THE MEANING OF THE CLAUSE (THE EC NEGOTIATOR HAD NOT ENLIGHTENED THEM)
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BY ASKING THE QUESTION WHETHER THE EC NEGOTIATOR WAS EMPOWERED TO MENTION BERLIN SPECIFICALLY. IF SO, HE PROPOSED THAT THE PHRASE "WEST BERLIN" BE USED IN THE AGREED MINUTE. THE EC NEGOTIATOR DID NOT RESPOND. THE

EC NEGOTIATOR INFORMED THE HUNGARIANS, HOWEVER, THAT THE PROPOSAL TO REFER TO "INTERNATIONAL" LEGAL STATUS WAS UNACCEPTABLE, SUGGESTED "PARTENT DU FAIT" ("PROCEED ON THE FACT," IN ORDER TO underscore THE FACT, NOT ASSUMPTION, THAT BERLIN IS PART OF THE EC) IN RESPONSE TO THE HUNGARIAN PROPOSAL FOR "CONSIDERE" AND, ON INSTRUCTIONS, SUGGESTED THAT THE FORM BE "PROCES VERBAL AGREE" (AGREED MINUTE), NOT A JOINT DECLARATION. THE HUNGARIANS DID NOT RESPOND BUT RETURNED TO BUDAPEST ON FEBRUARY 18 FOR NEW INSTRUCTIONS. THE EC NEGOTIATOR TOLD THE FRG MISSION TO THE EC THAT IN HIS VIEW THE TALKS HAD NOT FOUNDERED. THE HUNGARIANS HAVE A MATERIAL INTEREST IN AN AGREEMENT AND, HE NOTED, HAD NOT REJECTED THE EC PROPOSALS.

7. REGARDING THE TEXTILE AGREEMENT NEGOTIATIONS WITH POLAND (REF B), THE FRG MISSION TO THE EC REPORTED THAT THE POLES WERE EXPECTED TO COME TO BRUSSELS FOR FURTHER DISCUSSIONS THE WEEK OF FEBRUARY 20 AND THAT THE AREA OF APPLICATION CLAUSE WAS EXPECTED TO BE THE DOMINANT THEME.

8. UK BONN GROUP REP (EYERS) CALLED A BONN GROUP MEETING ON FEBRUARY 23 TO REPORT LONDON'S VIEWS ON THE DESIRABILITY OF NOT SPECIFICALLY MENTIONING BERLIN IN THE TEXTILE NEGOTIATIONS. VON BRAUNMUEHL SAID THAT WHEN HE HAD SUGGESTED THIS TO THE BONN GROUP ON FEBRUARY 17, THE HUNGARIANS HAD NOT YET SHOWN THAT THEY KNEW THE CLAUSE WAS INTENDED TO ENSURE THE INCLUSION OF BERLIN IN THE AGREEMENT. SINCE THEY HAD NOW DONE SO, HIS SUGGESTION (WHICH HE HAD NOT PURSUED PENDING UK AND FRENCH INSTRUCTIONS) HAD BEEN OVERTAKEN BY EVENTS.

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EYERS EXPRESSED APPRECIATION FOR THIS AND PROCEEDED TO REPORT LONDON'S INSTRUCTIONS.

9. (A) EYERS SAID THAT THE FCO APPRECIATES THE FLEXIBILITY WHICH THE AUTHORITIES OF THE FEDERAL REPUBLIC OF GERMANY HAVE SHOWN IN THE NEGOTIATION ON THIS CLAUSE. HOWEVER, THE FCO HAD SOME COMMENTS ON THE PROPOSED COURSE OF ACTION OUTLINED BY VON BRAUNMUEHL ON FEBRUARY 17. THESE COMMENTS RELATE PURELY TO TACTICS AND NOT TO SUBSTANCE. HE SAID COMMON OBJECTIVE IS TO FIND THE MOST EFFECTIVE WAY OF SAFEGUARDING THE GERMAN AND ALLIED POSITION ON BERLIN WITHOUT FORCING THE NEGOTIATIONS INTO IMPASSE.

(B) ACCORDING TO EYERS, THE BRITISH AUTHORITIES HAVE FROM THE BEGINNING HELD THE VIEW THAT THE RIGHT WAY TO BRING THE EASTERN EUROPEANS TO ACCEPT AGREEMENTS CONTAINING A TERRITORIAL APPLICABILITY CLAUSE IS BY

DOING EVERYTHING POSSIBLE NOT TO IDENTIFY THE CLAUSE AS A BERLIN CLAUSE. THE EFFECT OF THE ANSWER VON BRAUNMUEHL HAD PROPOSED TO GIVE TO THE HUNGARIAN QUESTION "WHAT IS THE MEANING OF THE PHRASE 'THE MEANING OF WHICH IS KNOWN'", I.E. "THE CLAUSE ALSO REFLECTS THE COMMUNITY'S POSITION REGARDING BERLIN"--WOULD BE TO CONVEY THE IMPRESSION THAT THE REAL PURPOSE OF THE TERRITORIAL APPLICABILITY CLAUSE IS PRECISELY TO BE A BERLIN CLAUSE.

(C) THE FCO'S VIEW WAS THAT THIS WAS NOT THE INTENTION WHEN THE LANGUAGE IN QUESTION WAS DRAFTED FOR USE IN THE FISHERIES NEGOTIATIONS (WITNESS THE FACT THAT IT IS INTRODUCED BY THE WORD "ALSO"); NOR WOULD THERE SEEM TO BE ANY GOOD PROSPECT OF THE HUN-

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GARIANS ACCEPTING A CLAUSE THUS CLEARLY LABELLED AS A BERLIN CLAUSE.

(D) THE FCO SUGGESTED IT WOULD SEEM MUCH BETTER--AS WELL AS MORE ACCURATE--TO ANSWER THE FIRST HUNGARIAN QUESTION ON THE FOLLOWING LINES:

AS A MATTER OF INTERNAL COMMUNITY PRACTICE AND LAW, IT IS NECESSARY TO BE CLEAR AS TO THE PRECISE AREA OF APPLICATION OF COMMUNITY AGREEMENTS. THE ARTICLE MAKES IT CLEAR THAT THE COMMUNITY'S INTERNATIONAL COMMITMENT UNDER THIS AGREEMENT HAS THE SAME TERRITORIAL SCOPE AS THE INTERNAL POWERS WHICH THE COMMUNITY EXERCISES IN RELATION TO TEXTILE IMPORTS.

AN ARTICLE OF THIS SORT HAS BEEN INCLUDED IN MANY OF THE COMMUNITY'S AGREEMENTS WITH THIRD COUNTRIES, SUCH AS THE AGREEMENTS WITH THE INDIVIDUAL EFTA COUNTRIES, AND THE LOME CONVENTION, AND IN THE DRAFT TEXTS OF OTHER AGREEMENTS CURRENTLY UNDER NEGOTIATION.

(E) IF THE HUNGARIANS, AFTER BEING GIVEN THIS ANSWER, PRESSED FOR FURTHER CLARIFICATION THEY WOULD BE GIVEN, ORALLY OR IN WRITING, OR SHOWN A FULL LIST OF COMMUNITY TERRITORIES IN WHICH THE TEXTILES AGREEMENT WOULD TAKE EFFECT. THIS WOULD, OF COURSE, INCLUDE WEST BERLIN: BUT IT WOULD DO SO IN A WAY WHICH AVOIDED SINGLING IT OUT. IF THE HUNGARIANS WERE SO UNREASONABLE AS TO PERSIST IN REGARDING THE TERRITORIAL APPLICABILITY CLAUSE THEREAFTER AS A "BERLIN CLAUSE", THE RESPONSIBILITY FOR ANY RESULTING COMPLICATION OF THE NEGOTIATIONS WOULD REST ON THEM. IT WOULD BE THEY WHO WOULD BE ON THE DEFENSIVE AND NOT--

AS NOW--THE COMMUNITY NEGOTIATORS.

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(F) IN SUMMARY, HE SAID A PROCEDURE OF THE KIND DESCRIBED IN PARAGRAPH D AND E WOULD FULLY MEET THE GERMAN AND ALLIED REQUIREMENTS ON BERLIN WHILE ENABLING THE COMMUNITY NEGOTIATORS TO EXCHANGE A WEAK POSITION FOR A STRONG ONE.

10. VON BRAUNMUEHL SAID THAT THE BRITISH PROPOSAL WAS AN INTERESTING ONE AND THAT HE WOULD PRESENT IT TO THE FOREIGN OFFICE'S LEGAL DEPARTMENT FOR THEIR VIEWS. FOR THE MOMENT, HOWEVER, FURTHER NEGOTIATIONS WITH THE HUNGARIANS WERE SUSPENDED PENDING THE HUNGARIANS' RETURN FROM BUDAPEST. HE THEN ASKED WHY THE FCO OBJECTED TO THE "FISHERIES" STATEMENT, NOTING THAT THE WORD "ALSO" (PARAGRAPH 9(C) SUPRA) MADE IT CLEAR THAT THE AREA OF APPLICATION CLAUSE WAS NOT A BERLIN CLAUSE.

11. EYERS RESPONDED BY SAYING THAT WE WERE NOT DEALING WITH THE SOVIETS BUT WITH SATELLITE STATES WHICH HAVE A STRONG INTEREST IN THE CONCLUSION OF THE AGREEMENTS. HE BELIEVED THE OTHER SIDE WAS PROBABLY LOOKING FOR A WAY AROUND THE BERLIN PROBLEM. HE BELIEVED THIS WAS TRUE OF THE HUNGARIANS, ALTHOUGH NOT OF THE SOVIETS. SINCE THE HUNGARIANS HAD MENTIONED BERLIN IN THE CONTEXT OF THE CLAUSE, IT WAS UNNECESSARY NOW TO ANSWER THE HUNGARIANS' QUESTION. HE SAID THE NEW UK PROPOSAL CLEARLY INCLUDED BERLIN. THE UK WAS EVEN PREPARED TO SHOW THE OTHER SIDE A LIST. HE BELIEVED THERE WAS A GOOD CHANCE THAT THE HUNGARIANS WOULD ACCEPT THE UK PROPOSAL. TACTICALLY, THE EC IS IN A STRONG POSITION. THE EAST KNOWS THAT IF THEY DO NOT SIGN THE AGREEMENT, THE EC CAN PROCURE ITS TEXTILES FROM TAIWAN OR ELSEWHERE.

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12. VON BRAUNMUEHL TOOK ISSUE WITH EYERS' VIEW THAT THE HUNGARIANS WERE LOOKING FOR A WAY AROUND THE BERLIN ISSUE. HE SAID THE FRG BELIEVED THE HUNGARIANS WOULD ACCEPT ONLY WHAT MOSCOW APPROVED BECAUSE THE SOLUTION FOUND IN THE TEXTILE AGREEMENTS WOULD SET A PRECEDENT FOR THE FISHERIES NEGOTIATIONS. VON BRAUNMUEHL THEN SAID THAT A LUNCHEON DISCUSSION BETWEEN THE EC NEGOTIATOR AND A MEMBER OF THE POLISH EMBASSY IN BRUSSELS ON FEBRUARY 21 CONFIRMED THAT THE HUNGARIANS HAD MAINTAINED CLOSE CONTACT WITH THE POLISH EMBASSY DURING THE NEGOTIATIONS OF THE PAST WEEK AND THAT THE HUNGARIANS WERE PROBABLY NOT LOOKING FOR A WAY OUT OF THE IMPASSE WITH THE EC. THE POLE TOLD THE EC NEGOTIATOR THAT, IN

THE EVENT THE EC OFFERED THE POLES THE SAME PROPOSALS ON AN AGREED MINUTE AS HAD BEEN OFFERED THE HUNGARIANS, HE WOULD NOT BE ABLE TO RECOMMEND THEM TO HIS GOVERNMENT SINCE THE EC PROPOSAL REFLECTED ONLY THE FRG POSITION.

13. THREE POINTS WERE UNACCEPTABLE, HE SAID: (1) "OF WHICH THE MEANING IS KNOWN"; (2) THE PHRASE "LEGAL STATUS" WITHOUT THE PREFACE "INTERNATIONAL"; AND (3) THE FORMULATION "ANY TERRITORY". THE POLE EXPLAINED THAT, OUT OF CONSIDERATION FOR HIS COUNTRY'S ALLIES, THE STATEMENT THAT THE "MEANING IS KNOWN" WAS NOT ACCEPTABLE. THE EC REFUSAL TO ACCEPT THE WORD "INTERNATIONAL" SHOWED THAT THE PHRASE "LEGAL STATUS" WAS A REFERENCE TO THE POSITION CONTAINED IN THE FRG'S BASIC LAW. THE PHRASE "ANY TERRITORY" ENLARGED IN A CERTAIN WAY THE AREA OF APPLICABILITY CLAUSE.

14. VON BRAUNMUEHL REPORTED THAT ON THE BASIS OF THIS DISCUSSION THE EC NEGOTIATOR NOW BELIEVED THAT THE HUNGARIANS WOULD PROBABLY NOT ACCEPT THE EC PROPOSAL FOR AN AGREED MINUTE. VON BRAUNMUEHL ADDED THAT, AS OF FEBRUARY 21, THE EC HAD NOT YET DECIDED WHETHER TO CONTINUE NEGOTIATIONS OR FIRST AWAIT THE HUNGARIAN

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REACTION. HE SAID THAT, UPON RECEIPT OF THE REPORT OF THIS EC-POLISH DISCUSSION, THE FRG FOREIGN OFFICE HAD SENT THE FOLLOWING CABLE TO ITS MISSION IN BRUSSELS.

BEGIN TEXT (INFORMAL TRANSLATION)

FOR YOUR INFORMATION AND, IF NECESSARY, TO PASS ON TO THE EC DIRECT NEGOTIATOR, WE INFORM YOU OF THE FOLLOWING:

(A) THERE IS NO NEED ON OUR SIDE TO EXPLAIN THE
V
AREA OF APPLICABILITY CLAUSE BEYOND THE STATEMENT (TO BE MADE ON THE MARGINS OF NEGOTIATIONS) THAT "THE MEANING OF THE CLAUSE IS KNOWN." THE EC SHOULD NOT CREATE THE IMPRESSION WITH THE POLES THAT WE DESIRE MORE OF THEM THAN THAT CONTAINED IN THE AREA OF APPLICABILITY CLAUSE.

(B) ONLY IF THE POLES TAKE THE INITIATIVE AND EXPRESS THE NEED FOR AN ADDITIONAL INTERPRETATIVE REMARK, WHICH WOULD FACILITATE THEIR ACCEPTANCE OF THE AREA OF APPLICABILITY CLAUSE, WOULD WE CONSIDER DOING THE SAME WITH THEM AS WITH THE HUNGARIANS.

(C) THE MAIN THING FOR US IS TO MAKE CLEAR THAT BERLIN (WEST) IS TERRITORIALLY INCLUDED IN THE AREA OF APPLICABILITY OF THE EC CONSTITUTIVE TREATIES AND

THAT THE TEXTILE AGREEMENT THUS ALSO APPLIES TO BERLIN (WEST). IN DOING SO, WE DO NOT WANT TO FORCE THE POLES TO ACCEPT OUR POSITION OF PRINCIPLE IN THE BERLIN QUESTION, NOR COULD WE ACCEPT THE POSITION OF THE WARSAW PACT STATES. THE CONJECTURES OF THE POLISH EMBASSY IN THIS CONTEXT ARE INCORRECT.

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(D) SINCE WE DO NOT WANT TO PRESENT DIFFERENT INTERPRETIVE REMARKS TO THE VARIOUS PARTNERS OF THE EC'S TEXTILE NEGOTIATIONS, WE WOULD PREFER THAT THE NEGOTIATIONS WITH THE HUNGARIANS BE CONCLUDED BEFORE THE NEGOTIATIONS WITH THE POLES ARE RESUMED.

END TEXT

15. EYERS THEN REPORTED ON A DISCUSSION BETWEEN FCO POLITICAL DIRECTOR HIBBERT AND CZYREK, THE POLISH VICE MINISTER FOR FOREIGN AFFAIRS, DURING HIBBERT'S VISIT TO WARSAW ON FEBRUARY 17. HIBBERT ASKED CZYREK WHETHER POLAND HAD SIGNED THE MULTIFIBER AGREEMENT WITH THE EC ON 15 FEBRUARY. THE HEAD OF THE POLISH FOREIGN MINISTRY'S PLANNING STAFF REPLIED THAT POLAND HAD NOT SIGNED AND, WHEN HIBBERT ENQUIRED WHY, AS IT SEEMED A PITY TO MISS THIS OPPORTUNITY, THE HEAD OF THE PLANNING STAFF SAID THAT POLAND COULD NOT SIGN THE AGREEMENT WITH THE BERLIN CLAUSE. EYERS SAID HIBBERT ASKED WHAT THE POLES MEANT, AS THERE WAS NO BERLIN CLAUSE. AFTER SOME MUTUAL CONSULTATION ON THE POLISH SIDE, THE RESPONSE WAS THAT IT WAS QUITE OBVIOUS WHAT THEY MEANT: THEY WERE REFERRING TO THE AREA OF APPLICATION CLAUSE.

16. HIBBERT SAID THAT THIS WAS EXACTLY WHAT IT WAS DESCRIBED TO BE--AN AREA OF APPLICATION CLAUSE AND NOT A BERLIN CLAUSE. THE POLES THEN ARGUED THAT THE TROUBLE WAS THAT THE COMMUNITY WAS CLAIMING THAT EC PROVISIONS EXTENDED TO BERLIN. HIBBERT REPLIED THAT THIS WAS A SIMPLE STATEMENT OF FACT. THE TREATY OF ROME AND ALL COMMUNITY INSTRUMENTS LINKED TO THE TREATY OF ROME HAD APPLIED TO THE WESTERN SECTORS OF BERLIN SINCE 1957, SUBJECT ONLY TO THE RESPONSIBILITIES OF THE ALLIED POWERS FOR THE STATUS AND SECURITY OF BERLIN NOT BEING

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AFFECTED. THERE WAS NOTHING NEW HERE.

17. AFTER SOME FURTHER DISCUSSION, HIBBERT OFFERED THE POLES SOME PERSONAL ADVICE. HE SAID THAT HE WOULD NEVER PERMIT ANYONE WORKING IN THE RELEVANT DEPARTMENTS

IN THE FCO TO TALK ABOUT A BERLIN CLAUSE IN AN EC TREATY. THERE WERE ALWAYS AREA OF APPLICATION CLAUSES, BUT NEVER BERLIN CLAUSES. HE SUGGESTED THAT THE POLES WOULD FIND THEIR PROBLEM EASILY SOLUBLE IF THEY FOLLOWED THE SAME PRACTICE OF CEASING TO TALK ABOUT A BERLIN CLAUSE. THE HEAD OF THE PLANNING STAFF OF THE POLISH FOREIGN MINISTRY LATER COMMENTED PRIVATELY TO HIBBERT THAT THE POLES HAD HOPED TO BE THE SECOND EASTERN EUROPEAN COUNTRY AFTER THE ROMANIANS WHICH WOULD SIGN A TEXTILE AGREEMENT WITH THE EC INCLUDING THE AREA OF APPLICATION CLAUSE. THEY HAD BEEN SURPRISED WHEN "THIS HAD NOT PROVED POSSIBLE".

18. VON BRAUNMUEHL COMMENTED THAT HIBBERT'S REMARKS TO THE POLES WERE VERY REASONABLE AND REFLECTED EXACTLY THE FRG POSITION. THE AREA OF APPLICATION CLAUSE WAS NOT THERE JUST TO INCLUDE BERLIN. THE IMPORTANT POINT TO THE FRG WAS THAT HIBBERT DID NOT HESITATE TO SAY THAT BERLIN HAD BEEN INCLUDED IN THE EC'S AREA OF APPLICATION SINCE THE BEGINNING, SUBJECT ONLY TO ALLIED RIGHTS AND RESPONSIBILITIES.

19. VON BRAUNMUEHL ASKED WHAT THE POLES HAD MEANT (IN PARA 17 SUPRA) BY SAYING THAT THEY HAD BEEN SURPRISED THAT "THIS HAD NOT PROVED POSSIBLE." DID THEY MEAN THE SOVIETS OR THE EC WAS RESPONSIBLE FOR THE FAILURE TO CONCLUDE THE AGREEMENT? EYERS SAID IT WAS A "GREAT CONFIDENTIAL

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MYSTERY".

20. THE US REP ASKED WHETHER THE FRG HAD REACHED A FINAL DECISION ON THE POLES' PROPOSAL TO USE THE FRANK-FALIN CLAUSE (REFS A AND B). VON BRAUNMUEHL ANSWERED THAT THE FRG HAD BEEN PREPARED TO REPLY NEGATIVELY TO THE POLISH PROPOSAL BUT THE PROPOSAL APPEARED TO HAVE BEEN OVERTAKEN BY EVENTS. THE FRANK-FALIN CLAUSE WAS UNACCEPTABLE BECAUSE IT WAS DESIGNED ONLY FOR BILATERAL FRG TREATIES, WHILE THESE AGREEMENTS WERE TO BE SIGNED BY THE EC. THE FRG COULD USE THE FRANK-FALIN CLAUSE IN MIXED EC TREATIES (THE EC SIGNS A FRAMEWORK AGREEMENT, THEN INDIVIDUAL STATES SIGN CORRESPONDING BILATERAL AGREEMENTS) WITH EAST EUROPEAN STATES.
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